



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

JGJr: 09-04

Paper No: ____

KAPLAN & GILMAN, L.L.P.
900 ROUTE 9 NORTH
WOODBIDGE NJ 07095

COPY MAILED

SEP 16 2004

OFFICE OF PETITIONS

In re Application of:

Zubok, et al.

Filed: 18 February, 2004

Application No. 10/781,506

Docket No. 523/3X5

DECISION ON PETITION

This is a decision on the request for a corrected filing receipt filed on 7 June, 2004, and the petition under 37 C.F.R. §1.53 filed on 25 June, 2004, to obtain the original filing date of 18 February, 2004, for the application, rather than the presently accorded date of 6 May, 2004.

The petition under 37 C.F.R. §1.53 is **GRANTED**.

BACKGROUND

This nonprovisional application was deposited on 18 February, 2004.

On 6 May, 2004, Petitioner filed a Preliminary amendment requesting, *inter alia*, the entry of a one sheet of drawings containing Figs. 4a - 4 g.

On 16 March, 2004, the Office mailed a "Notice of Omitted Items in a Nonprovisional Application," and indicated that, while a filing date had been granted, "Fig.(s) 4a - 4g" appeared to have been omitted from the application. In addition, the Notice set forth a filing date of 6 May, 2004.

Petitioner responded with a request for a corrected filing receipt, indicating that the correct filing date for the application was 18 February, 2004.

Petitioner filed on 25 May, 2004, the instant petition, along with, *inter alia*, a copy of the "Fig.(s)

4a - 4g" and indicating that the figures had been submitted not to accept a later filing date, but rather as part of Petitioner's Preliminary Amendment filed on 6 May, 2004, and seeking entry by the Examiner.

ANALYSIS

A review of the record reveals that the instant application was deposited on 18 February, 2004, and of the 16 sheets of drawings so deposited, none of the drawings included Fig.(s) 4a - 4g. Nonetheless, of the materials submitted, it appears that the application as deposited contained sufficient materials to satisfy the statutory requirements for a filing date.

Further, while Petitioner submitted a Preliminary Amendment on 6 May, 2004, which included the Fig.(s) 4a - 4g, it is clear that Petitioner sought entry of the drawings as containing no new matter under a determination that expressly is not made in this writing but rather is to be made at a future date by the Examiner.

CONCLUSION

Accordingly, the petition under 37 C.F.R. §1.53 is **granted**, and the petition fee is waived; however, the Notice mailed on 21 May, 2004, was correct and stands as mailed, and is not withdrawn as to Fig.(s) 4a - 4g as described in the application.

This application is released to the Office of Initial Patent Examination for further processing with a filing date of 18 February, 2004:

- (1) using only pages 1 - 36 (Specification, Claims, Abstract, and 16 sheets of drawings, deposited on 18 February, 2004. (The sheet of drawings containing Fig.(s) 4a - 4g is not to be included or used in this process.)
- (2) with direction to OIPE to correct Office records to reflect that 36 pages of specification (description, claims and abstract) and 16 sheets of drawings were present on filing on 18 February, 2004, and forward to Petitioner a corrected filing receipt setting forth a filing date of 18 February, 2004, reflecting therein that 36 pages of specification (description, claims and abstract) and 16 sheets of drawings were present on filing. (The sheet of drawings containing Fig.(s) 4a - 4g is not to be included or used in this process.)

Thereafter, the application and the Preliminary Amendment filed on 6 May, 2004, will be considered by the examiner in due course.

Telephone inquiries concerning this decision may be directed to the undersigned at (703)305-9199.

A handwritten signature in black ink, appearing to read "John J. Gillon, Jr.", with a stylized, looping flourish extending from the end of the signature.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions